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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 1025

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*,

v.

ARTHUR J. GOLDBERG, Secretary of Labor, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on May 11, 1961, enforcing compliance with an administrative subpoena issued pursuant to Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 529, 29 U.S.C. 521.

OPINIONS BELOW

The Memorandum of the United States District Court for the District of Columbia and the Opinion of the United States Court of Appeals for the District of Columbia Circuit are printed in the appendix to this petition. App. 1a-42a. Neither is yet officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on May 11, 1962. App. 12a. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Secretary of Labor, under Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 539, 29 U.S.C. 521, is empowered to subpoena *all* of the financial records of an international labor organization with a membership of over a million and one-half persons motivated *solely* by administrative curiosity.

2. Whether the Congress has the constitutional power to regulate, and require reporting of, those internal affairs of a labor organization which are wholly unrelated to its collective bargaining activities.

3. Whether the Secretary of Labor, under Section 601 of the Act, can require the production of records which, under Section 206 of the same Act, 73 Stat. 529, 29 U.S.C. 436, the Petitioner is not required to maintain.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The United States Constitution, Article I, Section 8, provides pertinently:

> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Section 201 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 534, 29 U.S.C. 431, provides as follows:

> "(a) Every labor organization shall adopt a constitution and bylaws and shall file a copy thereof with the Secretary, together with a report, signed by its president and secretary or corresponding principal officers, containing the following information—
>
> (1) the name of the labor organization, its mailing address, and any other address at which it maintains its principal office or at which it keeps the records referred to in this title;
>
> (2) the name and title of each of its officers;
>
> (3) the initiation fee or fees required from a new or transferred member and fees for work permits required by the reporting labor organization;
>
> (4) the regular dues or fees or other periodic payments required to remain a member of the reporting labor organization; and
>
> (5) detailed statements, or references to specific provisions of documents filed under this subsection which contain such statements, showing the provision made and procedures followed with respect to each of the following: (A) qualifications for or restrictions on membership, (B) levying of assessments, (C) participation in insurance or other benefit plans, (D) authorization for disbursement of funds of the labor

organization, (E) audit of financial transactions of the labor organization, (F) the calling of regular and special meetings, (G) the selection of officers and stewards and of any representatives to other bodies composed of labor organizations' representatives, with a specific statement of the manner in which each officer was elected, appointed, or otherwise selected, (H) discipline or removal of officers or agents for breaches of their trust, (I) impositions of fines, suspensions, and expulsions of members, including the grounds for such action and any provision made for notice, hearing, judgment on the evidence, and appeal procedures, (J) authorization for bargaining demands, (K) ratification of contract terms, (L) authorization for strikes, and (M) issuance of work permits. Any change in the information required by this subsection shall be reported to the Secretary at the time the reporting labor organization files with the Secretary the annual financial report required by subsection (b).

(b) Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year—

(1) assets and liabilities at the beginning and end of the fiscal year;

(2) receipts of any kind and the sources thereof;

(3) salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate from such labor organization and any other labor organi-

zation affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;

(4) direct and indirect loans made to any officer, employee, or member, which aggregated more than $250 during the fiscal year, together with a statement of the purpose, security, if any, and arrangements for repayment;

(5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and

(6) other disbursements made by it including the purposes thereof; all in such categories as the Secretary may prescribe.

(c) Every labor organization required to submit a report under this title shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action."

Section 206 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 529, 29 U.S.C. 436, provides as follows:

"Every person required to file any report under this title shall maintain records on the matters

required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than five years after the filing of the documents based on the information which they contain."

Section 207 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 529, 29 U.S.C. 437, provides as follows:

"(a) Each labor organization shall file the initial report required under section 201(a) within ninety days after the date on which it first becomes subject to this Act.

(b) Each person required to file a report under section 201(b), 202, 203(a), or the second sentence of 203(b) shall file such report within ninety days after the end of each of its fiscal years; except that where such person is subject to section 201(b), 202, 203(a), or the second sentence of 203(b), as the case may be, for only a portion of such a fiscal year (because the date of enactment of this Act occurs during such person's fiscal year or such person becomes subject to this Act during its fiscal year) such person may consider that portion as the entire fiscal year in making such report."

Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 539, 29 U.S.C. 521, provides as follows:

"(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any

provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this Act, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 26, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

Section 9 of the Federal Trade Commission Act of 1914, 38 Stat. 722, 15 U.S.C. 49, provides as follows:

"That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

"Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

"Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such an order of the court may be punished by such court as a contempt thereof.

"Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

"The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to

appear and testify and produce documentary evidence before the commission as hereinbefore provided.

"Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States."

Section 10 of the Federal Trade Commission Act of 1914, 38 Stat. 723, 15 U.S.C. 50, provides as follows:

"That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than $1,000 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

"Any person who shall willfully make or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any corporation subject to this Act, or who shall willfully neglect or fail to make, or cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corpo-

ration, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than $1,000 nor more than $5,000 or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

"If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of $100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court."

STATEMENT

Pursuant to the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 539 *et seq.*, 29 U.S.C. 401 *et seq.*, which became effective on September 14, 1959, the more than 78,000 labor organizations in the United States are required to file detailed organizational reports and periodic financial reports. Petitioner has filed all such required reports.

Relying upon Section 601 of the Act, 73 Stat. 539, 29 U.S.C. 521, and acting through his designee, the Commissioner of the Bureau of Labor-Management Reports, the Secretary of Labor, on May 10, 1961, issued a subpoena duces tecum to the Petitioner which effectively constituted a complete seizure of its books and records for a 22 month period. The exact language of the subpoena was as follows (R. 9-10):[1]

"UNITED STATES OF AMERICA

DEPARTMENT OF LABOR

BUREAU OF LABOR-MANAGEMENT REPORTS

SUBPENA DUCES TECUM

To International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
25 Louisiana Avenue, N. W.
Washington, D. C.

At the instance of the COMMISSIONER, BUREAU OF LABOR-MANAGEMENT REPORTS, DEPARTMENT OF LABOR, *you are hereby required to appear before* Edwin A. Brewer, an officer of the BUREAU OF LABOR-

[1] References are to the transcript of record in the United States Court of Appeals for the District of Columbia Circuit, certified by the clerk thereof on May 24, 1962, and filed herewith.

MANAGEMENT REPORTS, DEPARTMENT OF LABOR, at the offices of the International Brotherhood of Teamsters, et al., 25 Louisiana Avenue, N. W. *in the City of* Washington, D. C. *on the* 22nd *day of* May, 1961, *at* 10:00 *o'clock* a.m. *of that day, to testify In the Matter* of an investigation by the Bureau of Labor-Management Reports *involving* a determination whether any person has violated or is about to violate any provision in the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 et. seq., except Title I or amendments made by the Act to other Statutes.

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

All records for the period from July 1, 1959 to the present date maintained by you or under your control which contain any basic information or data on matters required to be reported under section 201(a) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 431(a) and 29 CFR 402, in the Labor Organization Information Report (Form LM-1) and the amendments to the Labor Organization Information Report (Form LM A), and under section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 431(b) and 29 CFR 403, in the Financial Reports (Form LM-2), by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, such records to include but not be limited to: vouchers, worksheets, audit reports, receipts, minutes of meetings including those of the executive board, applicable resolutions, ledgers, journals, accounts receivable, accounts payable, bank statements, check stubs, cancelled checks, deposit slips, financial statements, records of loans, records of mortgages, records of ownership of property real and

personal, deeds, records of trusts, records of investments, membership files both active and inactive; and surety bonds required under section 502(a) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 502(a) and 29 CFR 453, agreements or contracts or documents containing information with regard to such surety bonds.

FAIL NOT AT YOUR PERIL.

(SEAL)

IN TESTIMONY WHEREOF, *the seal of the* DEPARTMENT OF LABOR *is affixed hereto, and the undersigned, the* COMMISSIONER, BUREAU OF LABOR-MANAGEMENT REPORTS *of said* DEPARTMENT OF LABOR, *has hereunto set his hand at* Washington, D. C. *this* 10th *day of* May, 1961

John L. Holcombe"

The Petitioner declined voluntary compliance with a subpoena of such breadth (R. 11-13) and the Secretary secured an Order from the United States District Court for the District of Columbia requiring the Petitioner to show cause why the subpoena should not be enforced. (R. 3). During the course of argument in the District Court, it became clear that the sole basis for the issuance of the subpoena in question was administrative curiosity. Counsel for the Secretary made that candid statement during the following colloquy:

"The Court: Yes, but as a consequence of the information filed [by the Petitioner] and where the statute says the Secretary shall have the power, when he believes it necessary, to determine whether any person has violated or is about to violate any provision of this Chapter—in other

words, an examination of the reports by the Secretary might lead him to conclude that there has been a violation of the statute.

"Mr. MacGuineas: No.

"The Court: Or that the statute has been violated.

"Mr. MacGuineas: No. The question the Secretary has in mind is: Are these reports which the Union has filed in all respects accurate and correct.

"The Court: And nothing in the nature of a criminal proceeding?

"Mr. MacGuineas: No, not at all, Your Honor.

* * * * * * *

"The Court: And that is what you say, presumably, is involved here, a curiosity?

"Mr. MacGuineas: The Secretary is curious, exactly." (R. 16-17).

After argument, the District Court withheld disposition to await the outcome of the Secretary's appeal from an adverse decision in a similar, though not identical (R. 19), case. *Mitchell* v. *Truck Drivers Local Union No. 299, et al.*, 191 F. Supp. 229 (E.D. Mich. 1961). When the United States Court of Appeals for the Sixth Circuit reversed that decision, *Goldberg* v. *Truck Drivers Local Union No. 299, et al.*, 293 F. 2d 807 (6th Cir. 1961), certiorari denied, 368 U.S. 938 (1961), the court ordered the subpoena enforced. (R. 20, 21).

On appeal to the Court of Appeals, the order of enforcement was first stayed (R. 23) and then affirmed with exception of the required production of "membership files both active and inactive". (R. 24-34, at 33). That part of the subpoena which dealt with membership records was remanded to the District Court for further consideration. (R. 77). The re-

mainder of the subpoena was ordered enforced, but the Court of Appeals withheld issuance of the mandate to allow this Petition to be filed. (R. 76).

REASONS FOR GRANTING THE WRIT

1. This case presents, in sharp focus, an important question as to the scope of the investigative authority granted to the Secretary of Labor by Section 601(a) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 539, 29 U.S.C. 521(a). That section provides:

> "The Secretary shall have power *when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act* (except Title I or amendments made by this Act to other statutes) *to make an investigation* and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. . . ." (Emphasis supplied.)

Section 601(b), 29 U.S.C. 521(b), imports to the Secretary's investigation the provisions of Sections 49 and 50 of the Federal Trade Commission Act of 1914, 38 Stat. 722, 723, 15 U.S.C. 49, 50. Acting pursuant to authority claimed under Section 601, the Secretary served a subpoena upon the Petitioner which called for all—

> ". . . vouchers, worksheets, audit reports, receipts, minutes of meetings including those of the executive board, applicable resolutions, ledgers, journals, accounts receivable, accounts payable, bank statements, check stubs, cancelled checks, deposit slips, financial statements, records of loans, records of mortgages, records of ownership of property

> real and personal, deeds, records of trusts, records of investments, membership files both active and inactive; and surety bonds required under section 502(a) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 502(a) and 29 CFR 453, agreements or contracts to purchase such surety bonds and correspondence or documents containing information with regard to such surety bonds"—

for a period of 22 months from July 1, 1959 to the date of service. (R. 9). While the face of the subpoena recited that it was issued pursuant to an investigation "involving a determination whether any person has violated or is about to violate" the Act (R. 9), and while the Secretary's petition for enforcement made substantially the same declaration (R. 6), counsel for the Secretary quite candidly conceded in the District Court that the purpose of the subpoena was *solely* satisfaction of administrative curiosity. The colloquy was as follows:

> "Mr. MacGuineas: . . .
>
> "The Teamsters Union has filed reports as required by the statute and, with Mr. Williams' gracious permission, I would like to offer those reports so you can see the nature of the information which the Union gives the Secretary.
>
> "The Court: Yes, but as a consequence of the information filed and where the statute says the Secretary shall have the power, when he believes it necessary, to determine whether any person has violated or is about to violate any provision of this Chapter—in other words, an examination of the reports by the Secretary might lead him to conclude there has been a violation of the statute.
>
> "Mr. MacGuineas: No.
>
> "The Court: Or that the statute has been violated.

"Mr. MacGuineas: No. The question the Secretary has in mind is: Are these reports which the Union has filed in all respects accurate and correct.

"The Court: And nothing in the nature of a criminal proceeding?

"Mr. MacGuineas: No, not at all, Your Honor.

"May I offer, as Petitioner's Exhibit 1, the Union report for the latter half of 1959 and, as Petitioner's Exhibit 2, the Union report for 1960. When Your Honor looks at those reports, you will see that they are quite elaborate and give rather a detailed, complicated picture of the Union's financial operations.

"Now, the Secretary says, 'I want to look at your financial records so I can decide whether or not you have made any mistakes in your reports.' He is not saying, 'I think you have violated the law.' He just says, 'I want to look at your records.'

"The Court: He wants, in other words, to descend to the particular with reference to the general which is represented by the report.

"Mr. MacGuineas: Exactly. He wants to see the financial records which form the basis for the data in the reports. . . .

"The Court: And that is what you say, presumably, is involved here, a curiosity?

"Mr. MacGuineas: The Secretary is curious, exactly." (R. 16-17).

Thus, the Secretary instituted, and the two lower courts countenanced, virtually a complete seizure of several hundred thousand documents (R. 14-15) based solely on curiosity. Mr. Justice Holmes, in 1924, speaking for a unanimous Court in *Federal Trade Commission* v. *American Tobacco Co.*, 264 U.S. 298, 305-306 (1924), accurately described and condemned such an inquiry:

> "Anyone who respects the spirit as well as the letter of the 4th Amendment would be loath to believe that Congress intended to authorize one of its subordinate agencies to sweep all our traditions into the fire (*Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447, 479), and to direct fishing expeditions into private papers on the possibility that they may disclose evidence of crime. We do not discuss the question whether it could do so if it tried, as nothing short of the most explicit language would induce us to attribute to Congress that intent. The interruption of business, the possible revelation of trade secrets, and the expense that compliance with the commission's wholesale demand would cause, are the least considerations. It is contrary to the first principles of justice to allow a search through all the respondents' records, relevant or irrelevant, in the hope something will turn up."

Congress has not used "the most explicit language" of the type projected by Mr. Justice Holmes in granting power to the Secretary. Quite the contrary. The language of the Act, when compared with the language in analogous statutes, and when read in light of its legislative history, reveals clearly that Congress placed a limitation upon the Secretary's power. Thus, this case differs from *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946), in which this Court approved a broad administrative subpoena issued under Section 11(a) of the Fair Labor Standards Act, 52 Stat. 1066, 29 U.S.C. 211(a). That Act gave the Administrator the right, *inter alia*, to make any investigation "which may aid in the enforcement of the provisions of this chapter" and that was, in the words of the Court, "an instance of 'the most explicit language' which [left] no room for questioning Congress' intent." 327 U.S., at 201. Likewise in *United States* v.

Morton Salt Co., 338 U.S. 632 (1950), in which this Court sustained an administrative demand of great breadth, even a cursory analysis of the investigative powers of the Federal Trade Commission shows the broadest authority to investigate compliance with antitrust decrees, 38 Stat. 721, 15 U.S.C. 46, and it was in this context in which the subpoena was issued and approved.

The statute in the case presently at Bar, however, presents a sharply different situation. As noted, Congress is well versed in language which can be utilized in granting broad powers of inquiry. Section 11(a) of the Fair Labor Standards Act, 52 Stat. 1066, 29 U.S.C. 211(a), and Section 6(c) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(c), are but examples. A prime example is found in Section 7602 of the Internal Revenue Code of 1954, 68A Stat. 901, 26 U.S.C. 7602, in which Congress granted the broadest authority of investigation "for the purpose of ascertaining the correctness of any return. . . .". But, in Section 601 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 539, 29 U.S.C. 521, it is clear that Congress did not empower the Secretary to conduct a full scale inquiry for that purpose. The administrative desire for an audit is not sufficient.

Petitioner does not argue that the Secretary is required to make a showing of "probable cause" prior to the issuance of administrative subpoenas. Such a requirement was specifically deleted from the final draft of the bill. But, at the same time the "probable cause" requirement was deleted, the Congress was careful to differentiate the investigative power granted by this Act from that granted by other statutes.

> "Under nearly every statute requiring the filing of reports, such as the Internal Revenue Act and the Fair Labor Standards Act, the Administrator can conduct 'spot check' investigations unhampered by the 'probable cause' requirement. Our amendment rewrites this section to give the Secretary investigatory power *which he believes it necessary in order to determine whether a violation has occured or is about to occur.*" Senate Report 187, 86th Cong., 1st Sess., p. 91. (Emphasis supplied.)

Thus, recognizing the breadth of powers which previously have been granted, Congress specifically chose to make a more limited grant of authority.[2]

Moreover, in this same Act, Congress has specifically granted the right *to members* to examine records for the purpose of verifying the accuracy of reports filed with the Secretary.

> "Every labor organization required to submit a report under this title shall make available the information required to be contained in such report

[2] The Secretary declines to accept any such limitation on his power of investigation. Assistant Secretary of Labor John J. Gilhooley, in a speech before the Labor Law Section of the American Bar Association, equated the investigative authority of the Secretary with that of the Internal Revenue Service. 46 L.R.R.M. 48 (1960). The Sixth Circuit went almost as far in equating the authority with that of the Administrator of the Fair Labor Standards Act:

> "We believe *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, is dispositive of this issue . . . . The Secretary here has the same power as the Administrator." 293 F. 2d 807, at 812, 814.

And the Court below held:

> "We accept and adopt the disposition made by the Sixth Circuit in that case." App. 24a, at 25a.

Petitioner submits all are in error.

> to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause *to examine any books, records, and accounts necessary to verify such report.* The court in such action may, in its discretion, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." (Emphasis supplied.) Section 201(c), 73 Stat. 524, 29 U.S.C. 431(c).

Had Congress intended the Secretary to have the power of random investigation to check or verify the reports filed under Section 201, it could have provided that the Secretary have the power "to examine any books, records, and accounts necessary to verify such report."

Congress has, therefore, placed a limitation on the authority of the Secretary to institute investigations. What that limitation is requires specific determination by this Court. It may be that a simple assertion of belief by the Secretary that there is a likelihood of past or prospective violation is sufficient. Such an assertion will, in many cases, be impossible to controvert. But, whatever construction is put on the statute, Congress has made it abundantly clear that satisfaction of official curiosity, under this Act, is insufficient.

For another reason, the whole of the subpoena is fatally defective. An administrative subpoena is valid only if the information sought is reasonably relevant to a valid investigation. But this subpoena, devoid as it is of a specific statement of purpose, provides no

gauge by which relevancy could be measured. Administrative curiosity provides no useful test. Nor does the rather nebulous statement that it is issued as part of an investigation to determine "whether any person has violated or is about to violate any provision" of the Act. (R. 9). The Act is a voluminous statute covering many subjects—trusteed subordinate bodies, elections, fiduciary responsibilities, eligibility for office, extortionate picketing, disciplinary action, financial procedures; and numerous penal provisions. It is, in effect, a code of laws governing the internal affairs of labor unions and their relations with others. To state that the purpose of the subpoena is to explore violations of this code of laws is to conceal by mass inclusion.

2. To the extent that the statute in question seeks to regulate internal union affairs bearing no substantial relation to a union's collective bargaining function, *and require reporting thereon*, the statute goes beyond the reach of *federal* authority. Generally, record keeping and reporting requirements have been enacted incident to a regulatory scheme properly within the power of Congress. Such requirements in the Fair Labor Standards Act, 52 Stat. 1066, 29 U.S.C. 211(c), the Federal Aviation Act, 72 Stat. 766, 49 U.S.C. 1377(d), the Federal Power Act, 49 Stat. 854, 16 U.S.C. 825(a), the Securities Act, 48 Stat. 897, 15 U.S.C. 78(q), to name but a few, are of this type. So, too, are many of the requirements of Section 201(a) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 524, 29 U.S.C. 431(a). For example, requiring the reporting of strike vote procedures, 29 U.S.C. 431(a)(5)(L), hiring hall practices, 29 U.S.C. 431(a)(5)(M), contract ratification provisions, 29

U.S.C. 431(a)(5)(K), may be supportable as a power ancillary to the unquestioned power to enact laws relating to collective bargaining activities. But, while parts of Section 201(a) may thus meet the test of the commerce clause, Section 201(b) does not. Section 201(b) is an attempt to legislate fiscal responsibility[3] for union officers and, of necessity, is concerned with internal union affairs beyond the regulating powers of Congress.

This case, then, poses the question raised, but left unanswered, in *United States* v. *Five Gambling Devices*, 346 U.S. 441 (1953). In that case, indictments

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[3] There seems to be no question that that is what Congress has done.

The committee report accompanying S. 1555, the predecessor bill to that enacted, states:

> "Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs." S. Rep. No. 187 on S. 1555, 86 Cong., 1st Sess., p. 7.

Similarly, Senator Jacob Javits, a member of the Committee on Labor, said with reference to the Act, as it appeared in final form:

> "For example, *I think the attention paid by Congress to internal democracy* within unions, and incorporated in those sections which deal with the bill of rights, elections, and trusteeships, *and the attention being paid by Congress to the need for the higher standards of fiduciary responsibility* and for the highest type of public information, which are contained in the sections on reports, are of the greatest importance to the country and the trade union movement." 105 Cong. Rec. 16428-9. (Emphasis supplied.)

And, a Report of the Bureau of Labor-Management Reports, the division within the Department of Labor charged with administering the statute, states boldly:

> "Legislating democracy is an experiment at best, but it seems to be successful." Report of Bureau of Labor-Management Reports, Fiscal Year 1960, pg. 14.

against certain individuals and libels against certain gambling devices charged a violation of 64 Stat. 1134 *et seq.*, 15 U.S.C 1171 *et seq.*, a statute prohibiting the interstate shipment of gambling devices to states where the use of such devices was illegal and requiring dealers in such devices to register annually and to file monthly reports concerning each device sold or delivered. Failure to report was punishable as a crime. Neither the libels nor the indictments alleged that the devices in question had moved in commerce but the government contended that the statute applied without regard to commerce and that Congress, in order to make the prohibition upon *inter*state shipments effective, was empowered to require reporting of *intra*state transactions. The district court sustained a motion to dismiss the indictments on the grounds that the statute was beyond the power of Congress. On direct appeal to this Court, the judgment of dismissal was affirmed. Mr. Justice Jackson, in an opinion joined by Justices Frankfurter and Minton, observed:

> "We do not intimate any ultimate answer to the appellees' constitutional questions other than to observe that they cannot be dismissed as frivolous, nor as unimportant to the nature of our federation. No precedent of this Court sustains the power of Congress to enact legislation penalizing failure to report information concerning acts not shown to be in, or mingled with, or found to effect commerce . . . . Indeed, we find no instance where Congress has attempted under the commerce power to impose reporting duties under penal sanction which would raise the question posed by these proceedings." 346 U.S., at 446.

These three Justices, avoiding the constitutional question, construed the statutory language as applying

only to gambling devices shipped in interstate commerce. 346 U.S., at 452. Mr. Justice Black, joined by Mr. Justice Douglas, deeming the statute to be unconstitutionally vague, 346 U.S., at 454, concurred in the result without reaching the commerce question.

The statute in the case at Bar goes far beyond the one which so sharply divided this Court in the *Gambling Devices* case; for in that case a concededly valid *inter*state ban had been enacted and the *intra*state reporting requirements were defended as necessarily incident thereto. Congress has now "attempted under the commerce power to impose reporting duties under penal sanction." Section 209, 73 Stat. 529, 29 U.S.C. 439.

Section 201(b) of the Act is neither related to interstate expenditures nor limited to matters of a collective bargaining nature. A fair reading of this portion of the Act compels the conclusion that Congress used its conceded power to regulate those affairs of a labor union which *are* related to collective bargaining, and consequently to commerce, as a springboard for enacting a comprehensive regulation of all internal affairs of such organizations. Laudable as the motive may be, it is beyond the power of Congress.

While Congress has the power constitutionally to regulate activities of a collective bargaining nature, *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937), Congress lacks the power to go further. This Court recognized that fact in *Jones & Laughlin:*

> "The authority of the federal government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce 'among the several states' and the internal concerns of a state. That dis-

tinction between what is national and what is local in the activities of commerce is vital to the maintenance of our federal system." 301 U.S., at 30.

Thus, while the power of Congress under the Commerce power may be broad and while Congress may, incidentally, regulate some intrastate activities where necessary to a valid interstate regulation, e.g. *Wickard v. Filburn*, 317 U.S. 111 (1942), Congress does not have unlimited authority. Here, what Congress has attempted to do is to regulate matters of purely local concern.

The implications of what Congress has done are as clear as they are far-reaching. Labor organizations concededly have an impact upon commerce. But so do business establishments, churches and fraternal organizations. If the existence of such impact, without more, confers federal authority to require detailed financial reports, to impose federal fiduciary standards, to create federal crimes for misuse of funds, to fix terms of office—in short, to treat such oragnizations as creatures of the federal government—then, and only then, can this part of the Act be sustained. To sustain the Act under these circumstances, however, would necessarily "destroy the distinction, which the commerce clause itself establishes". *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937).

3. To the extent that the subpoena requires the production of records which predate the Act, it is a demand for records which the petitioner is under no obligation to retain. The effective date of the statute in question was September 14, 1959; yet, the subpoena called for the production of records "from July 1, 1959 to the present date . . ." (R. 9). Thus, the Secretary gave a retroactive effect to the statute, one not present in the language of the Act. "Retroac-

tivity, even where permissible, is not favored, except on clearest mandate." *Claridge Apartments v. Commissioner*, 323 U.S. 141, 146 (1944).[1]

It is no answer to say, as did the Secretary and the court below, that the Union has made itself vulnerable to such an inspection by filing its first Section 201(b) report to cover the period from July 1, 1959 to December 31, 1959. Section 201(b) of the Act, 73 Stat. 521, 29 U.S.C. 431(b), requires a labor organization to file annual reports setting forth certain specific information which accurately discloses "its financial condition and operations for its preceding fiscal year". Section 207(b) of the Act, 73 Stat. 529, 29 U.S.C. 437(b), requires that the Section 201(b) report be filed within 90 days after the end of each organization's fiscal year. The fiscal year for the appellant Union coincides with the calendar year. Section 207(b) further provides that any organization which first becomes subject to the Act *during* its fiscal year, may consider that portion of the year for which it is subject "as the entire fiscal year in making such report". Since the Act became effective on September 14, 1959, the first Section 201(b) report was required to encompass only the period between that date and December 31, 1959, a period of three and one-half months. The preparation of such a report for a three and one-half month period would present burdensome

[1] The court below is the first court to consider this question specifically. Every other decision on the new substantive obligations of the Act has denied it retroactive effect. *Smith v. General Truck Drivers Local 467*, 181 F. Supp. 14, 18 (S.D. Cal. 1960); *Robertson v. Banana Handlers Local 1*, 183 F. Supp. 423, 427 (E.D. La. 1960); *Local 107 v. Cohen*, 182 F. Supp. 608, 612 (E.D. Pa. 1960), affirmed 284 F. 2d 162 (3rd Cir. 1960), certiorari denied 365 U.S. 833 (1961); *Flaherty v. McDonald*, 183 F. Supp. 300, 304 (S.D. Cal. 1960).

and complex accounting procedures and, in recognition of this, the pertinent regulation provided that the initial Section 201(b) report could be either for three and one-half months or for a longer period. 29 C.F.R. 403.1(b). The appellant reported on a six month basis.

This fact, however, did not give the Secretary the right to inquire into those records which predate the Act. Nor does the Act require the appellant Union to retain such records. Section 206 of the Act, 73 Stat. 529, 29 U.S.C. 436, provides that every person "required to file any report" is to "maintain records on the matters *required to be reported*" (emphasis supplied) for a period of five years. Appellant was not *required* to report on matters prior to September 14, 1959, and, thus, is not required to have, and to make, such records available. The fact that it chose to report as it did does not make these records "required" records subject to administrative subpoena.

CONCLUSION

This is a new act of Congress with which we are here dealing. It is an Act no part of which has yet been reviewed by this Court. While analogy may be made to the investigative provisions of other statutes, those acts are of only limited assistance for they involve different purposes, different obligations and vastly different language. Only this Court can with precision lay out the guide lines which are to be followed. Petitioner submits therefore that the petition for a writ of certiorari should be granted.

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